

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

DENISE GALLAGHER,

Civ. No. 07-1213-AA  
O R D E R

Plaintiff,

vs.

LINCOLN COUNTY and BERNICE  
BARNETT,

Defendants.

AIKEN, Judge:

Pursuant to Fed. R. Civ. P. 26, defendants' move to compel plaintiff to produce documents responsive to defendants' first request for production. Defendants' motion is denied.

## DISCUSSION

## 1. Psychological Records

Defendants' request for production of plaintiff's psychological records is denied. See Jaffee v. Redmond, 518 U.S. 1 (1996). Plaintiff requests damages only for general emotional distress. Plaintiff does not allege intentional or negligent infliction of emotional distress, unusually severe emotional distress in light of her allegations, nor does she allege a specific psychiatric injury or disorder. Therefore, I find no waiver of the psychotherapist-patient privilege. See Fed. R.

1 Evid. 501. If plaintiff's allegations change, defendants are  
2 granted leave to renew this discovery request.

3 2. Medical Records

4 Denied. Plaintiff does not allege any bodily injury, nor  
5 does she allege she received medical treatment for any physical  
6 injury or disorder resulting from her alleged treatment by  
7 defendants. Plaintiff's claim for non-economic damage is for  
8 emotional distress "that a reasonable woman would experience  
9 under the same or similar circumstances." Plaintiff has not put  
10 her physical condition at issue in this lawsuit, and therefore  
11 her medical records are irrelevant. Again, however, if this  
12 circumstance or plaintiff's allegations change, defendants' are  
13 granted leave to renew this discovery request.

14 3. Employment Records

15 Plaintiff worked for defendants from September 16, 2006,  
16 until her termination on November 9, 2006, less than two months.  
17 Defendants have subpoenaed plaintiff's employment records for the  
18 twelve years preceding her work for defendants, from 1994 to  
19 2006. Defendants are not entitled to more.

20 4. Lawsuits or Claims

21 \_\_\_\_\_ Denied. The court relies on plaintiff's representation to  
22 the court and defense counsel that she has no documents related  
23 to employment claims, other than a prior workers' compensation  
24 claim for an eye injury. The court notes that plaintiff has not  
25 alleged an eye injury claim against defendants here.

26 5. Tax Returns

27 \_\_\_\_\_ Denied. The court relies on plaintiff's statement that she  
28 has not been employed since her termination by defendants, she

1 provided defendants with all of her W-2s for 2006, and provided  
2 defendants with a document showing her income from unemployment.

3 6. Notes Kept by Plaintiff

4 Denied. The court relies on plaintiff's representation to  
5 the court and defense counsel that she "kept no memorandum,  
6 diaries, journals, appointment books, [or] calendars" that relate  
7 to her employment with defendants. Any documentation that  
8 plaintiff created at the direction of her attorney is covered by  
9 the attorney-client privilege or work product doctrine, and  
10 similarly, any documentation her attorney has recorded from  
11 conversations with plaintiff is protected by the same privileges.

12 CONCLUSION

13 Defendants' motion to compel (doc. 17) is denied as stated  
14 above. Further, defendants' request for telephone oral argument  
15 is denied as unnecessary.

16 IT IS SO ORDERED.

17 Dated this 26 day of February 2008.

21 /s/ Ann Aiken  
22 Ann Aiken  
23 United States District Judge  
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